IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2971 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 No

DEVANDAS JASHUMAL RAMCHANDANI

Versus

GUJARAT PROPAC LTD,

Appearance:

1. Criminal Misc.Application No. 2971 of 1999

MR FB BRAHMBHATT for Petitioner No. 1

MR DHARMESH NANAVATI for MR NIGAM R SHUKLA for Resp.No. 1

MR MA BUKHARI APP for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 04/09/2002

ORAL JUDGEMENT

1. By this application under Section 482 of the Code of Criminal Procedure, 1973 ('the Cr.P.C.' for short), the petitioner, who is the original accused No.2 in Criminal Case No.1447 of 1998 pending in the Court of the learned Chief Judicial Magistrate, Vadodara, has prayed for quashing of the complaint.

2. The learned counsel for the petitioner Mr.F.B.Brahmbhatt pointed out from the record that by the respondent's own admission and as is obvious from bare reading of the cheque that was dishonoured, the cheque was drawn by a partner of M/s. Shreeji Associates. It was, on that basis, submitted that the petitioner is not implicated in the criminal proceeding as the drawer of the cheque and the offence under Section 138 of the Negotiable Instruments Act was not disclosed or constituted as far as the petitioner was concerned.

3. The learned counsel Mr.Dharmesh Nanavati appearing for Mr.Nigam Shukla for the original complainant, after verification of the record and reading of the affidavit-in-reply of an employee of the complainant, conceded that there appears to have been a slip or mistake on the part of the learned advocate of the complainant insofar as no notice was issued to the drawer of the cheque after the alleged dishonour and the drawer firm or its partner, who signed the cheque, are also not implicated in the original complaint. Therefore, the fact that emerges is that the petitioner was not served with any notice regarding dishonour of the cheque as the drawer of the cheque. The petitioner was admittedly not the drawer of the cheque. In these facts and circumstances, the petition is required to be allowed and the original accused No.1 and 2 being admittedly the same party, the whole of the complaint and the proceedings in Criminal Case no.1447 of 1998 are required to be quashed. Rule is made absolute accordingly and the

aforesaid criminal case is quashed with no order as to costs. It is, however, clarified at the request of the learned counsel Mr.Dharmesh Nanavati that it will be open for the original complainant to file appropriate complaint against the drawer of the cheque, if so advised, and if such complaint lies.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)